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MEMORIAL

OF

JOHN A. SUTTER

TO

The Senate and House of Representatives of the United States

IN CONGRESS ASSEMBLED.

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This memorialist shows that he has been for some years an humble but earnest suitor for justice at the hands of the National Government, upon grounds which he will proceed to set forth in as few words as possible. Now in his old age, and in a state of absolute penury, he is glad to be saved from the necessity of stating a number of facts personal to himself by the authentic and persuasive declarations of others, who are not only persons of the most exalted standing, but not at all interested, pecuniarily, in the result of this application for the long-withheld redress of such oppressive grievances as it is believed that few men of the present generation have been fated to undergo.

1. The first of these testimonials (if they may be so called) to which the attention of your honorable bodies will be called, is the following extract from the well known opinion of Justice Campbell, delivered in the Supreme Court of the United States. Referring to this memorialist, this distinguished jurist says:

"In two or three years after his arrival the claimant was commissioned by the Governor of California to guard the northern frontier, and to represent the Government in affording security and protection to its inhabitants against the incursions of the Indians and marauding bands of hunters and trappers who occasionally visited the valley for plunder. In the year 1841 he commenced the erection of a fort at New Helvetia, at his own expense. It was surrounded by a high wall and defended by cannon. Within this fort were dwelling houses for his servants and workmen, and workshops for the manufacture of the various articles of necessity. There was a grist mill, tannery, and distillery attached to the establishment. A number of Indians were domesticated by him, and contributed to cultivate his fields of grain and defend the settlement from more savage tribes. He was possessed of several thousands of horses and neat cattle, which were under the care of his servants. There were collected at different times from twenty to fifty families, and there were in the course of years some hundreds of persons connected with the settlement. He is described as having been hospitable and generous to strangers, and the Governors of California bear testimony to the vigor with which he performed the duties of his civil and military commission."—(*See* 21 *Howard*, *p.* 170.)

"The record shows that the claimant, a native of Switzerland, immigrated to the Department of California about the year 1839, was naturalized a citizen of Mexico, and with the leave of the Government formed a settlement near the junction of the Sacramento and American rivers, which was designated New Helvetia. The country was at this time uninhabited, except by bands of warlike Indians, who made frequent depredatory incursions upon the undefended settlements to the south and east of this place."

2. General William T. Sherman recently addressed a

letter to a personal friend, which has been subsequently published, in which he says:

"To him (Sutter) more than to any single person, are we indebted for the conquest of California, with all its treasures."

3. The Hon. J. Ross Brown, in a speech delivered by him on the 9th day of September last, a few weeks previous to his lamented decease, (addressed to the Territorial Pioneers of California, assembled at Pioneer's Hall, in the city of San Francisco, on the 9th of September last,) thus expresses himself:

"The series of events which resulted in the acquisition of California by the United States may be said to have commenced prior to 1845. Without going into unnecessary details, the Mexican nation, under the Presidency of Paredes, found itself in the beginning of that year on the eve of a war with the United States. The department of California was in an exposed position, and already the explorations of Lieutenant Fremont and others were attracting attention to the Pacific Slope.

"At that time, John A. Sutter, a native of Switzerland, who had served in the armies of Napoleon, was a resident of California. This brave adventurer had established a rancho or farm near the banks of the Sacramento river. In order to ward off the attacks of hostile Indians, he had erected a strong defensive work, then and now known as Sutter's Fort. Generous in his hospitality as he was brave and enterprising, Sutter received with open arms the adventurous Americans who crowded across the plains at that period. He furnished them with provisions and aided them with his teams over the difficult passes of the Sierras. Enamored with their conversation, which breathed the spirit of liberty, and possibly fired with the story of Tell and Gessler, he made a rendezvous of his Fort. The Mexican Gov-

ernment was prompt to resist the threatened incursion of the Americans. Don Andrés Castillo, a Mexican officer of note, was dispatched to California in order to negotiate with Sutter for the possession of this stronghold. Castillo was empowered to pay for it as much as $100,000; and actually offered Sutter, in addition, several fine tracts of Mission land, now worth millions.

"But Sutter, with an unselfish devotion to our interests, which has never been properly appreciated, rejected all these tempting offers, preferring to unite his fortune with the Americans—thus saving to the Government of the United States an important point of defence, and a large expenditure of treasure. He is now old and poor. His lands are taken away from him. The Legislature of California has, from session to session, grudgingly given him a pittance of $250 a month, to enable him to prosecute his claims at Washington; but the General Government has never recognized his services."

4. In the city of New York, at a re-union of old Californians, on the 26th of March, 1874, the Hon. William B. Farwell thus kindly alluded to this memorialist:

"Neither time nor the occasion will permit me to follow in detail the effect that this wonderful discovery has had upon our country or the world; but realizing as we all do how vast are the benefits which we have experienced, it becomes us to pause and inquire whether the service thus performed by General Sutter and Marshall has been justly recognized and requited either by California or by the nation. I am the last one who would, by the smallest word or intimation, cast one reflection upon the generosity of California or Californians in an individual, or in a representative legislative capacity; but I am free to say that, in my judgment, California has failed to fulfill her entire duty towards this venerable old man, even with the provision which she *has*

made for him, and which will probably carry him through life. For from whatever standpoint we view the character and labors of General Sutter, whether as the discoverer of gold in California or as the benefactor and philanthropist, in which latter capacity he is so familiar to you all, we cannot fail to be impressed by the fact that no ordinary reward can be adequate compensation for the benefits which he conferred upon California, our country, and all mankind. If it be said that he was but the instrument in the hands of Providence in doing this work, then so much the greater reason that we should recognize it as such, and be generous in the reward, even as the patriarchs of old gave their offerings to God in token of their recognition of Divine grace and goodness."

It should be here mentioned, in connection with the statement of Mr. Farwell, that whatever money it has pleased the State of California to cause to be paid to this memorialist, he has received, as he understands the matter, only as some indemnification for large amounts of taxes which he has had to pay to the Government of that commonwealth, in the form of taxes paid by memorialist on lands of which he has been subsequently deprived.

Many other testimonials of a nature similar to those already presented might be here adduced; but this memorialist will content himself with the citation of the following letter of Governor Lowe, of California:

"STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,

"*Sacramento, October* 6, 1865.

"*To the Senate and House of Representatives of the United States:*

"The bearer of this, Major-General John A. Sutter, was one of the early pioneers of this coast, and by his industry, bravery, and indomitable energy, did more to subdue the

savage tribes and encourage settlement than any other man. His name and fame is world-wide, not only in connexion with his early adventures, but also as being the cause of the discovery of gold in this State—gold having first been discovered in a mill-race which he was having constructed. His kindness and generosity to the early emigrants, who arrived here needy, was proverbial. Although possessed of large grants of land (conceded to him by the Mexican Government) at the date of the acquisition of this Territory by the United States, the delays and expenses incident to the legal adjudication of these titles have stripped him of all his property, leaving him, in his old age, comparatively penniless.

"In view of these considerations, this State at the last session of the Legislature granted him an annuity of three thousand dollars per annum for five years. He now has it in contemplation to ask of Congress some recognition of his services, with compensation, and I earnestly commend his claim to the favorable consideration of Congress.

"Very respectfully, your obedient servant,

"FREDERICK F. LOWE,

"*Governor of California.*"

The principal of those equitable grounds for relief relied upon by this memorialist may be thus concisely stated:

In 1841, Alvarado, then Mexican Governor of California, made a formal grant to this memorialist of eleven leagues of land, comprising what is known as New Helvetia, the said memorialist having already faithfully complied with the conditions prescribed by the laws of Mexico in the settlement and occupation of lands granted by the Government for these purposes.

1. In 1845 this memorialist received from Mitcheltorena, then Governor of California, the further grant of twenty-two leagues of land, called *Sobrante*, (surplus).

This last grant was made, as is not denied, in the course of an insurrection against the authority of the said Mitcheltorena; was one of the last acts of this Governor, and the grant was expressly made in consideration of the *valuable civil and military services of the said memorialist.*

Both of these grants were afterwards confirmed by the Board of Land Commissioners appointed for the investigation of land titles in California. The confirmatory action of this Board received afterwards the deliberate ratification of the United States District Court for the Northern District of California. An appeal was taken on the part of the United States, in both cases, to the Supreme Court of the Union. This tribunal approved the grant for eleven leagues, but disapproved the action of the District Court and Board of Land Commissioners in reference to the second grant upon grounds so manifestly *technical* as to justify, on the part of this memorialist, something of a mingled feeling of regret and surprise.

In a strictly legal aspect it may be stated, without fear of contradiction, that the Sobrante grant was made upon valuable and meritorious consideration—the previous rendition by this memorialist of both civil and military services to the Government from which his title purports to have been derived. He had acted as the agent and representative of the Mexican Government in a remote and unsettled province, and had advanced considerable sums of money, and contributed of his means to sustain the constituted authorities. In the language of the Supreme Court itself: "In the civil commotions that overturned the power of Mitcheltorena, he (the present memorialist) was the principal stay of his administration." In the opinion of the Board of Land Commissioners in California, delivered by Commissioner Thompson, a most enlightened and conscientious man, the ground is clearly and emphatically taken, that this grant was rather an act of *purchase* than a grant of the ordinary kind; in other words, that the land in question was actually *bought and*

paid for by the services which memorialist had rendered to the Government. Judge Thompson says: "This evidence indicates clearly the services in consideration of which the grant was made, and is sufficient to constitute Captain Sutter a purchaser for a pecuniary consideration to the extent of his interest in it." The terms of the grant, "for good conduct and *services*," harmonize with that view.

2. This memorialist had undisputed *possession* of the grant for years, up to the discovery of gold; maintained his possession for years thereafter, and prosecuted his said claim before the Courts of the United States with the greatest assiduity and at most enormous expense; so that no want of diligence on his part can be suggested.

3. The treaty of Guadalupe-Hidalgo provides that "Mexicans now established in territories previously belonging to Mexico, and who remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof and moving the proceeds wherever they please without their being subjected to any contribution, tax, or charge whatever. It is a recognized principle of international law, that treaty stipulations are to be interpreted liberally; and it is difficult to understand how it can accord with the intent and spirit of this treaty, that the memorialist being in possession of the land in question, acquired, in the manner already stated—his title to which had been more fully established by the continuous acquiescence of that Government in such possession—and when this title had also been confirmed by the Commission appointed by our Government to adjudicate such title, should be subjected to years of expensive litigation in the courts of the country to which the Territory was ceded to maintain a contested title, while, in addition to the enormous expenses thus incurred, he had to bear the heavy burden of taxes upon the land of which he was afterwards dispossessed.

In fact, the laws providing for an appeal to the Supreme Court in cases of contested land titles, have ever been felt to be a serious grievance in those States and Territories which have been acquired by cession from foreign States. Among the various instances in which this feeling has found formal expression, memorialist will cite the strong and very able appeal of the Legislature of Missouri to Congress, in 1827, to make some further and simpler provision for settling land titles in that State, on the ground that the existing provisions of law for such appeal operated as a substantial denial of justice in most cases; many parties being unable to meet the expenses attending such an appeal, and others preferring to forego their title to lands rather than maintain them by such protracted, costly, and uncertain litigation. "Look at the act of Congress," is the significant inquiry of the appeal, "and say is it not a cause of complaint, when a citizen of Missouri is compelled to seek at Washington those rights which, under the foreign government, were not disputed, and must pay the immense costs of a Federal land suit even when he succeeds."

4. Memorialist had been subjected to a very great outlay of money not only in the maintenance of his title, but also in the occupancy and improvement of this grant. The surveys of it had cost him $20,000, and he had paid out in taxes, before the decision of the Supreme Court, over $30,000. More than this, he had given titles to a large part of the second grant under deeds of general warranty, which, after this decision, he had to make good, at a great sacrifice, out of the first grant, so that the confirmation of his title to this grant was comparatively of little advantage to him.

The cost of the grant to memorialist can be appropriately estimated as follows:

Expenses in money and services which formed the original consideration of the grant.....	$50,000
Surveys and taxes on the same.....	50,000
Carried over.....	$100,000

Brought over.....	$100,000
Cost of litigation, extending through years, including fees to eminent counsel, witness fees, traveling expenses, &c.....	125,000
Amount paid out to make good the covenants of deeds upon the grant over and above what was received from sales.....	100,000
Total amount.....	$325,000

It is a part of the history of this Republic itself, that when, after the acquisition of California, it was proposed in Congress to bring up for investigation before a Board of Commissioners, appointed for this purpose, all the land titles then existing in the hands of Mexican grantees, several American statesmen of high consideration objected strongly to this proceeding, denouncing it as a flagrant violation, both of the letter and spirit of the Treaty of Guadaloupe-Hidalgo, and predicting great injustice and oppression as likely to grow out of this measure towards the holders of land in this far-off region. Colonel Benton himself, in a well known speech, declared that Congress was about to open a new dooms-day book in California. This memorialist is not prepared to decide how far this prophetic language has been verified in other instances; but he is well satisfied that no Saxon vassal of William the Conqueror ever had more reason to complain of palpable and indefensible injustice than it has been his lot to suffer.

The value of the grant now in dispute to this memorialist, had it been ultimately confirmed to him, would, upon the most moderate estimate, have reached the sum of $1,000,000.

The statement voluntarily made by the Hon. Robert J. Walker, and which is one of the papers herewith submitted, is well worthy of consideration; for he asserts and demonstrates that the claim of this memorialist is "a

genuine and meritorious" one. This distinguished jurist adds:

"I do not presume to criticise the decision of this great tribunal (the Supreme Court). I considered the grant valid, as had also the Board of Land Commissioners and the District Court of California. But without entering into the question of the technical legality of the grant, that it was genuine and meritorious *cannot be doubted.* That General Sutter has rendered most important services to the United States is quite certain; that he has lost everything, and by no default of his, is well known in California."

It is certainly in no spirit of disrespect to the highest appellate court in the land, that this memorialist feels called upon to superadd one or two suggestions. He will not complain that eminent counsel, in the argument of this case before this august tribunal, urged that considerations of *policy* should prevent the confirmation of so large a grant of valuable lands to a single individual. The proposition that because Governor Mitcheltorena was temporarily absent from the capital when the grant in question was made, seems to claim some little consideration mainly in consequence of its having been to some extent the subject of remark in the opinion of the Supreme Court itself. The idea has been advanced that this *Sobrante* grant ought not to be recognized as a valid act of civic administration, because it did not occur at that precise locality where the governmental functions were ordinarily performed. An additional suggestion has been thrown out to the effect that as this particular grant was made for the benefit of one on whose aid the Government was chiefly relying for the putting down of the existing insurrection against its authority, there is reason to suspect that it may be in some degree attributable to *moral compulsion.*

The truth of the matter manifestly appears to be (as is

now shown by unquestionable testimony) that this grant had been orally promised to be made long before the military exigency referred to arose, and would, in point of fact, have been consummated but for the accidental absence from the capital of the Secretary of State. The subsequent services of this memorialist only increased his claim to the grant antecedently promised ; and based, as already shown, upon services some time before rendered by him, it is difficult to perceive how this anterior claim could be extinguished or enfeebled by the rendition of additional services on the part of this memorialist. The term *Sobrante* (surplus) applied to this grant, added to the fact that it was of contiguous territory to the former, and included within the same natural boundaries, shows that it was in the contemplation of the Mexican Government when it made that of New Helvetia ; and this view is strengthened by the consideration that such surplus or additional grant was in accordance with the provisions of the old Spanish law, inherited by Mexico, regulating colonial settlements. (See Report of Alexander Hamilton, Land Commissioner, State Papers, Public Lands, vol. III.)

In reference to the allegation that Mitcheltorena's leaving his capital, and putting himself at the head of his army in order to subdue an insurrection, thereby *abdicated* his civil trusts, or that his powers as a civil functionary were thereby suspended—who can entertain a notion so fanciful and invalid, that reflects for a moment upon some of the most memorable events recorded in the world's history? Did all civil authority expire when the Athenians, forced by the pressure of war, retreated with all that they had of property, including the archives of State, to their ships upon the ocean, before the multitudinous hosts of Persia? Did the civil functions of Alexander the Great terminate so soon as he got beyond the boundaries of Macedon, when marching for the conquest of Persia? Did Xerxes suffer a similar deprivation of his civil authority after crossing into Europe

for the conquest of Greece? Did the Emperors Julian, Adrian, Marcus Aurelius, and numerous others who might be mentioned, become incapable of issuing a valid edict when leading armies against foreign foes? Was it ever contended that the famous Berlin and Milan decrees of Napoleon were deficient in validity, because of their not emanating from Paris? Was Santa Anna ever supposed to have forfeited his powers as a civil ruler when leading his armies against the Texans in their struggle for independence, or against the armies of Generals Scott and Taylor? Had the Confederates, in their struggle for independence, succeeded in taking possession of Washington, would the Government of the United States have of necessity ceased to exist for all the important purposes of civil rule?

But it is time to bring this memorial to a conclusion. Valid as this memorialist deems his claim to be to the whole amount of twenty-two leagues of land granted to him in the manner and under the circumstances described, he does not expect, or even desire, to be indemnified in full for all the losses he has sustained, and for the pecuniary detriment which he has suffered in consequence of the action of the Government, of which he is now complaining. Far from it. Nor does he desire to receive one dollar by way of requital for all the money he has formerly expended in succoring American Pioneers when placed in circumstances of the greatest peril and suffering.

He asks not one cent for such aid as he rendered to his adopted and profoundly honored Government in the extension of its domain to the borders of the Pacific Ocean, and availing itself of the untold treasures of California. He asks only that the Government shall secure to him so much of its unsold public lands as it has caused to be unjustly taken from him, or its equivalent in money, *minus* the expenses which may have been heretofore incurred in the causing of his twenty-two leagues to be surveyed, and in disposing of the same. This would amount in money to the

sum of 97,651 acres, or $122,063, *minus* the expenses already referred to.

This memorialist has at different times, under severe pecuniary pressure, and with hope almost extinct, manifested a willingness to receive even less than is herein claimed, but he is not willing to believe that this Government will refuse to award to him at least the moderate indemnity now prayed for.

It is almost unnecessary that this memorialist should remind the two Houses of Congress that there are well-known precedents for such action as he now invokes; among which may be adduced that of General Vallejo, which is directly in point. He also had obtained a grant of land from the Mexican authorities in return for services rendered by him and money advanced for government purposes. The Supreme Court decided against General Vallejo's right to the "Suscol Ranche;" by which decision he was on the eve of being ruined (he having sold and conveyed it by deed of general warranty). when Congress, in a spirit of justice and magnanimity, passed the act of March 3, 1863, authorizing the entry of the land at one dollar and a quarter an acre, by which he was saved from inevitable ruin.

Confiding fully in the disposition of Congress to do in the premises all which may be right and becoming, this memorialist now submits his claim to relief for their calm and unprejudiced consideration.

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